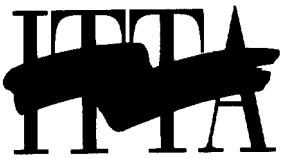

INDEPENDENT
TELEPHONE & TELECOMMUNICATIONS
ALLIANCE

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 1, 1998

Mr. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Comments of the Independent Telephone and Telecommunications Alliance, CC Docket No. 98-56 and RM-9101

Dear Ms. Salas:

This letter is to advise you that the Independent Telephone and Telecommunications Alliance (ITTA) is submitting the attached Comments on this date in the above-referenced proceeding. One original and nine copies of the Comments are attached for filing with your office. Please contact me if you have any questions regarding this matter.

Respectfully submitted,

David W. Zesiger
Executive Director

Enclosures

No. of Copies rec'd 0+9
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Performance Measurements and	)	CC Docket No. 98-56
Reporting Requirements	)	RM-9101
For Operations Support Systems,	)	
Interconnection, and Operator Services	)	
And Directory Assistance	)	

COMMENTS

OF THE

INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

David W. Zesiger, Executive Director
Donn T. Wonnell, *Counsel For*

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June 1, 1998

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Summary

ITTA supports the Commission's determination to provide guidance on OSS matters, rather than to prescribe and impose further complex regulations. Regulatory efficiency requires that the costs of regulation be considered in tandem with their intended benefits. In the case of midsize companies, those costs can be greater than those benefits.

ITTA supports the Commission's goals of providing useful guidance on OSS performance measurements; providing a foundation for fair enforcement of OSS interconnection requirements; and providing the basis for deterring unlawful conduct by means of the foregoing. Such measurements will assist midsize companies in demonstrating compliance with applicable requirements, and thus help to correct an imbalance in the interconnection process to date. But the proposed measurements are unnecessarily complex in the case of midsize companies. The goals of the Commission (guidance, enforcement, deterrence) can be achieved with a less complex set of measurements for midsize carriers, thereby also achieving the Commission's desire to avoid undue burdens on small, rural, and midsize carriers.

ITTA proposes a list of principles or guidelines of its own, which will achieve all of the Commission's goals without such an undue burden. ITTA urges that the Commission utilize these principles as guidance to the states for midsize companies and emphasize, further, the use of existing data and reports already submitted to the state commissions by such carriers. Use of such extant reporting maintains the enforcement and deterrence capabilities sought in the Notice, but avoids the unnecessary costs associated with more complex reporting schemes which disparately impact midsize carriers.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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Performance Measurements and	)	CC Docket No. 98-56
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Comments
of the
Independent Telephone & Telecommunications Alliance

In its Notice in this proceeding, the Commission expressed an intention to seek ways in which to increase consumer choice by fostering competition in the provision of local telephone service.[1] The methodology chosen to effect this end consists of a very complex set of data-based measurements, themselves to be subjected to complex mathematical analysis. In appearance, the Notice pursues a now-standard regimen of regulatory prescription.

Appearances, however, are deceiving. The Commission undertakes in this proceeding a new direction by restraining its own role in the process. First, it proposes rules for guidance, rather than for imposition. In foregoing actual rules for model ones, the Commission has chosen persuasion and accommodation as the means to secure its policy

ends. Second, the Commission declines to establish substantive standards for use in those measurements, preferring instead to obtain empirical knowledge first, derived from actual experience with the model being proposed. In the course of this approach, the Commission also expressly solicits the views of small, rural, and midsize companies, recognizing the potentially disparate impact such requirements may have on these companies.

The Independent Telephone & Telecommunications Alliance (ITTA), on behalf of its midsize company members,[2] welcomes the opportunity to address these matters and to provide affirmative suggestions for achieving the Commission's goals in this proceeding. In its Comments, ITTA addresses three subject areas: the appropriateness of the Commission's focus on regulatory efficiency; the appropriateness of a simplified measurement model for midsize companies; and the appropriate principles to be reflected in such a simplified model. Although ITTA believes the proposed model to be unnecessarily complex, it fully supports the new direction which the Commission is taking in addressing the issues and intends to participate constructively as this proceeding unfolds.

1. By foregoing more prescription, the Commission advances the "goal of promoting regulatory efficiency."

As ITTA recently discussed,[3] the two-year period following adoption of the 1996 Act witnessed a substantial outpouring of new rules and strictures. In many cases, the new rules were prescriptive in nature, establishing new requirements in areas where the

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[1] *In the Matter of Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, Notice of Proposed Rulemaking, CC Docket No. 98-56, RM-9101, at 3 (released April 17, 1998) ("Notice").

[2] ITTA is an independent association which represents incumbent local exchange telecommunications carriers with less than 2% of the nation's access lines. See 47 U.S.C. 251(f)(2).

[3] *In the Matter of Petition for Forbearance for 2% Midsize Local Exchange Companies Filed by the Independent Telephone & Telecommunications Alliance*, Reply Comments of the Independent Telephone & Telecommunications Alliance, AAD 98-43, at 21-22 (filed May 18, 1998).

historical record presented no evidence of need. This outpouring contributed to what Chairman Kennard called "the mass of detailed, often arcane, rules that have accumulated over the years."[4] The rules, well-intended, often ignored (or, at least, seldom discussed) the concept of regulatory efficiency: the requirement that the ultimate benefits of any Commission regulation should exceed its costs.[5] Occasionally, the new regulations overstepped the boundaries of law.[6]

Rather than continue that approach, the Commission here undertakes a modest but noteworthy course correction long overdue. The Notice proposes performance measurements and reporting requirements "that are not legally binding," but which instead "provide guidance, in the most efficient and expeditious manner possible, to the states and the industry...." Separately, the Commission forbears from the imposition of new regulations concerning substantive standards, preferring to await "a more informed and comprehensive record upon which to decide whether to adopt national legally binding rules." In combination, these actions result in good policy and good law, and represent a change in direction that ITTA fully endorses.

The Commission's approach is good policy, in part, because it promotes the public interest. As Commissioner Furchtgott-Roth notes:

> Under the public interest standard, regulations should be economically efficient – that is, the ultimate benefits of any Commission regulation should exceed its costs. These costs include the burdens associated with the requisite gathering and maintaining of accurate information, and any accompanying reporting requirements. In almost all circumstances, truly efficient regulation relies on relatively few and very simple measures.[7]

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[4] Remarks by William Kennard, Chairman, Federal Communications Commission, to USTA's Inside Washington Telecom, at 3 (April 27, 1998)(as prepared for delivery).
[5] Notice, Commissioner Furchtgott-Roth Dissent at 4.
[6] *See Iowa Utilities Board v. FCC et al.*, 1997 U.S. App. LEXIS 18183 (8th Cir. 1997).

Although Commissioner Furchtgott-Roth believes that the Notice is excessively regulatory (as does ITTA, in many respects), the Notice is also, by historical standards, comparatively restrained. In it, the Commission acknowledges the need "to achieve statutory goals, while also minimizing the burden on all incumbent carriers, especially small, rural, and midsized incumbent telephone companies."[8] It comports with Commissioner Powell's repeatedly expressed goal of shifting the focus of Commission regulation from prescription to enforcement.[9] And in so doing, the Commission can gradually shift the situs of competition between carriers, from the hearing hall to the marketplace. This course promotes the public interest by promoting competition, rather then the relative positioning of one set of competitors.

Moreover, it is good policy because it permits industry participants to solve industry problems, wherever practicable. As the Notice indicates, "most commentors, including LCI and CompTel, have recommended that the Commission rely on these [ATIS] committees' efforts to formulate standards for OSS interfaces before initiating action to develop standards."[10] Such industry-sponsored work groups can provide the expertise necessary to address the issues, preserving the Commission's resources for other matters. Further, as the Commission notes, these groups are open to all industry segments, incumbent and new entrant alike. Such joint participation should, and is, promoting mutually satisfactory, technically feasible standards that address the real issues of the marketplace.[11]

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[7] Notice, Commissioner Furchtgott-Roth Dissent at 4.
[8] Notice at para. 3.
[9] See "Technology and Regulatory Thinking: Albert Einstein's Warning," Remarks of Commissioner Michael K. Powell before the Legg Mason Investor Workshop, Washington, D.C. (March 13, 1998, as prepared for delivery)("Commissioner Powell March Speech").
[10] Notice at para.128.
[11] Id, para 127, n. 159.

Finally, the Commission's course is good policy because it recognizes the authority and ability of the states to deal with interconnection issues, including OSS compliance. The 1996 Act places the primary responsibility for determination and implementation of interconnection matters on the state commissions. Both the Notice and the antecedent Local Competition Order acknowledge the many instances in which state commissions have acted or are acting in advance of the Commission to address various interconnection issues.[12] By choosing cooperation over fiat, the Commission will "shed further the misperception that somehow States will not 'do the right thing' in promoting competition unless we essentially force them to." [13]

The Notice represents good law, as well. By recognizing the position of the states in interconnection, the Commission avoids potentially serious legal problems without weakening its own interconnection role.[14] As ITTA has previously pointed out,[15] Commission imposition of OSS requirements different from and more expansive than those which ILECs provide to themselves contravenes the Eighth Circuit's decision in the *Iowa Utilities Board* case. The Court, in addressing this point, stated:

> We also agree with the petitioner's view that subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC's existing network -- not to a yet unbuilt superior one. Additionally, the nondiscrimination requirements contained in these subsections do not justify these FCC rules [51.305(a)(4), 51.311(c)]. The fact that interconnection and unbundled access must be provided on rates, terms, and conditions that are nondiscriminatory merely prevents an incumbent LEC from arbitrarily treating some of its competing carriers differently

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[12] *In Re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, 61 Fed Reg. 45476 at para. 528 (1996)("Local Competition Order").
[13] Notice, Commissioner Powell Separate Statement at 1.
[14] Consistent with the Commission's expressed desires (Notice at para. 25), ITTA does not elaborate upon the legal issues which implementation of formal rules could create. ITTA and its member companies reserve the right to do so, should the occasion arise.
[15] Reply Comments of the Independent Telephone & Telecommunications Alliance, CC Docket No. 96-98, pp. 5-7 (July 30, 1997).

> than others; it does not mandate that incumbent LECs cater to every desire of every requesting carrier.[16]

Section 251 and 252, the heart of congressional interconnection provisions, rely upon private party negotiation, state commission mediation and arbitration, and federal district court adjudication, in that order. Only in the limited case of state commission failure to act is the FCC given specific authority. The other specific roles enumerated by the Circuit Court[17] do not supply the Commission with any authority to prescribe further rules for OSS, whether of standards or measurement.

Further, as the Court noted, even where the Commission has authority, subsection 251(d)(3) of the 1996 Act prevents the Commission from preempting a state commission order that establishes access and interconnection obligations (including expressly 251) so long as the state commission order is consistent with the requirements of 251, and does not substantially prevent the implementation of the requirements of section 251 and the purposes of Part II of the 1996 Act (section 251 – 261). Of Section 251(d)(3), the Court said:

> This provision does not require all state commission orders to be consistent with all of the FCC's regulations promulgated under section 251. The FCC attempts to read such a requirement into this subsection by asserting that a state policy that is inconsistent with an FCC regulation is necessarily also inconsistent with the terms of section 251 and substantially prevents the implementation of the section. The FCC's conflation of the requirements of section 251 with its own regulations is unwarranted and illogical.[18]

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[16] *Iowa Utilities Board* at **80.
[17] Id at **14, n10: "Such areas are limited to subsections 251(b)(2) (number portability), 251(c)(4)(B) (prevention of discriminatory conditions on resale), 251(d)(2) (unbundled network elements), 251(e) (numbering administration), 251(g) (continued enforcement of exchange access), and 251(h)(2) (treatment of comparable carriers as incumbents)."
[18] *Iowa Utilities Board* at **56-57.

The flexibility inherent in a state-by-state approach is particularly important to midsize companies. Without such flexibility, midsize carriers might be unable to exercise their rights under section 251(f) without interference or prejudice arising from a mandated program of measurements and reporting. The non-binding approach of the Commission promotes the avoidance of such a collision.

In sum, this Notice demonstrates the Commission's ability to play an active, influential role in interconnection issues without being prescriptive, without engendering conflict with the states, and without generating new legal controversy.[19] ITTA believes this a turning point in the Commission's approach to regulation which all parties should welcome and support.

2. For midsize companies, a simplified, consolidated group of measurements will achieve the Commission's objectives without undue burden on the carriers.

a. ITTA supports the Commission's objectives, which serve the public interest.

The Commission's Notice offers three objectives to justify the recommended performance measurements:

- To provide guidance on how OSS performance might be measured;
- To provide part of the foundation for enforcement of OSS interconnection requirements; and
- To deter unlawful conduct by means of the foregoing.[20]

[19] All parties are aware that the *Local Competition Order* is now on appeal to the U.S. Supreme Court (*petition for cert. granted*, Nos. 97-826, etc., January 26, 1998). Even if that Court reverses the Eight Circuit ruling in any matter relevant here, the other considerations listed in the Notice and discussed herein would warrant continuation of the Commission's course of "guidance," rather than prescription, as set out in the Notice.

[20] Notice at para. 15, 16, and 17.

The Commission seeks to secure these objectives by proposing model rules which respond to state regulatory and industry requests for direction on this subject. Notably, NARUC requested "guidelines," not directives, and the Notice adopts this approach.[21] As the Notice recites, such guidance intends to promote uniformity, but without preventing variance where warranted. This serves the public interest.

ITTA agrees with and supports these basic objectives, though perhaps for reasons different from those of the petitioners in this proceeding. ITTA's members have spent countless man-hours and investment dollars attempting to comply with the interconnection requests of competitive carriers. Nonetheless, they have been subjected to baseless allegations of non-compliance, and even non-cooperation. These allegations prove more difficult to rebut in the absence of some measurement framework, whereby to demonstrate their compliance efforts. As the Notice correctly indicates:

> Incumbents, on the other hand, will be able to use the performance measurements as evidence of compliance with their relevant statutory obligations in order to counter allegations of noncompliance.[22]

Measurements, thus, constitute a two-way street in a process which has been markedly one-way for the last two years.

ITTA also concurs in the OSS categories selected for measurement: preordering, ordering, provisioning, maintenance and repair, and billing; and in the additional areas of interconnection, and OS/DA. These subject areas conform to past FCC discussions and rulings on OSS. The Circuit Court also provided implicit support for this categorization in its *Iowa Utilities Board* decision.[23] More importantly, they conform to the manner in which customer orders are processed and service is provided in the marketplace. Measurements in

[21] Id. at para. 22.
[22] Notice at 4.

these areas directly tie to the statutory requirements concerning nondiscrimination and just and reasonable terms and conditions.[24]

In many instances, however, the multiple measurements proposed are redundant from a practical perspective. Similarly, the lists of categories requiring measurement are unnecessarily lengthy. Moreover, midsize carriers already engage in extensive reporting to their state commissions. Adjusting the proposed measurements to these existing data sources and reporting forms, according to an articulated set of principles, can achieve Commission goals while affirmatively reducing the undue burden on small, rural, and midsize companies which might otherwise arise.

b. In the case of midsize companies, the Commission's objectives can be achieved with less complexity, therefore with greater regulatory efficiency.

The complexity and detail of the measurement structure proposed in the Notice is, as to midsize companies, unwarranted and unnecessary to achieve the three Commission objectives discussed above (measurement, enforcement, and deterrence). Commissioner Furchtgott-Roth aptly summarizes the problem:

> This NPRM is tedious with detail. Is it really necessary to measure more than none aspects of average response time for the pre-ordering phase alone? Do we really need to know the average reject notice interval, the average FOC notice interval, the average jeopardy notice interval, the percentage of orders in jeopardy, and the average completion notice interval for resale residential POTS, resale business POTS, resale specials unbundled loops (with and without number portability, unbundled switching, unbundled local transport, combination of UNEs and interconnection trunks?...I fear that the 12 page list of measurements and reporting requirements is too costly and far too long to be useful for efficient regulation.[25]

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[23] *Iowa Utilities Board* at *59.
[24] 47 U.S.C. 251(c)(3)("just, reasonable, and nondiscriminatory") and (c)(4) ("unreasonable or discriminatory").
[25] Dissenting Statement of Commissioner Furchtgott-Roth at 4.

He further notes that a total of 30 measures are proposed, each entailing additional levels of detail.

In support of this plentitude of rules, the Notice recites no evidence, other than "anecdotal."[26] Rather than the product of evidence, the proposed measurement scheme seems a product of the kind of speculation Commissioner Powell finds unnecessary:

> Rather than imagining all the dangers that might result if we let a company do what it has asked and then take equally speculative action to meet those speculative dangers, let's instead police conduct and make decisions based on real facts. If there are "teeth" in our enforcement efforts, companies will take heed or pay the price.[27]

The Commission[28] and the states[29] already have substantial means and authority to police interconnection conduct, without the imposition of speculative, complex measurement structures.

Fortunately for midsize companies, the Commission acknowledges the potential for disparate impacts of its proposals among classes of carriers. Rather than seeking a one-size-fits-all standard of measurement, the Notice seeks:

> . . .comment on whether the proposed model performance measurements and reporting requirements will impose particular costs or burdens on small, rural, or midsized incumbent LECs. ...We also seek comment on how the proposed model rules should be modified to take into account any particular concerns of these LECs. For example, certain incumbent LECs may believe that the proposed guidelines should be tailored to meet circumstances relating to the areas in which small, rural or midsized LECs are located.[30]

ITTA believes that the model rules can and should be modified to reduce the burden on midsize carriers, and proposes guidelines for such modifications in the next section. Even

[26] Notice para 13 and n. 16 therein.
[27] Commissioner Powell March Speech at 6.
[28] See, e.g., 47 U.S.C. 204 (hearings and investigations) and 208 (complaints).
[29] 47 U.S.C. Sections 251, 252.

with such modifications, the resulting measurements which still satisfy the Commission's objectives, identified above, for enforcement and deterrence.

ITTA concurs with Commissioner Powell that enforcement and deterrence are better than prescription. In our view, the intricate interlock of measurement categories and subcategories being proposed is not driven by practical enforcement requirements, but rather by theory. In its attempt to cover all the possibilities of evasion, the model omits to analyze the plausibility of company conduct and the degree of company effort required to discover, exploit, and conceal such evasions. The unarticulated presumption that midsize companies have resources to plan for such escape and evasion of regulation is false. As ITTA pointed out recently,[31] midsize companies have lawful means, under Section 251(f), for obtaining relief from unduly burdensome interconnection requirements. The application of this complex scheme to them necessarily presumes that such companies will choose the risk and expense of unlawful means for avoiding interconnection obligations, when lawful means (with less risk and less expense) are always available.

Aside from being unwarranted in the case of midsize companies, the complexity of the proposed measurements is unnecessary. All companies perform some of these or similar measurements for their own purposes or at the instance of state commissions. Substituted use of available sources of information reduces cost while yet ensuring that measuring data will be continuously produced,[32] thus continuously available for comparative review. Since the existence and the availability of data underlay the

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[30] Notice para 131.

[31] *In the Matter of the Petition on Defining Incumbent LEC Affiliates as Successors, Assigns, or Comparable Carriers Under Section 251(h) of the Communications Act*, Comments of the Independent Telephone & Telecommunications Alliance, CC Docket No. 98-39, pp. 2-5 (filed May 1, 1998).

[32] As noted above, both the Commission and the states have multiple means for compelling the production of data in specific case.

enforcement and deterrent objectives of Commission, this approach should reasonably satisfy the Notice's requirements.

ITTA notes that the Notice's complexity may also be a product of Section 271 concerns.[33] Section 271 does not apply to midsize companies. The issues and statutory provisions attending large ILEC transition to competitive markets are very much different from those affecting 2% companies. Whereas large ILECs may have the time, resources, and personnel to sit down with large IXCs or other CLECs, work through, and agree to resolutions on the scale and of the complexity set out in the Notice, midsize companies do not. Nor can midsize companies afford the standing armies of lawyers and economists necessary to fight and win a ground war over OSS in the regulatory arena. Instead, these companies' resources would be better spent on engineering and systems integration in order to provide in the competitive arena the resale and unbundled elements which competitive carriers want and need.

In a few instances, the Notice appears to justify the complexity of the measurement system on substantive grounds. For example, the Notice defines nondiscriminatory access to mean "efficient and effective" communication between the new entrant and the incumbent carrier. By efficient and effective communication, the Notice means-

> ...that the competing carrier must be able to access the customer data necessary to sign up customers, place an order for services or facilities with the incumbent, track the progress of that order to completion, receive relevant billing information from the incumbent, and obtain prompt repair and maintenance for the elements and services it obtains from the incumbent.[34]

[33] See, e.g., Notice at para. 13 and n17; para. 56 and n82; para. 98 and n129.
[34] Notice at 6.

Subsequently, the Notice implies a duty on incumbent LECs to be "capable of handling reasonably foreseeable commercial volumes of order." Footnote 95 seems to imply that mechanized order processing is a *sine qua non* to nondiscrimination.[35]

These appear to be substantive standards, of the kind the Notice forswears. Nothing in the above quoted language contains any sense of the comparative – i.e., whether a lack of automated systems results in degraded performance as to all orders, or just those of new entrants. As the Circuit Court has already determined, above, the 1996 Act nowhere empowers the Commission to mandate higher standards for competitors than those applied to or used by the incumbent, itself. The standard for discrimination is comparability, based upon what exists. It is not the desire of the requesting carrier, based on a yet to be built network. To the extent measurement complexity is justified on the latter grounds, it is not justified at all.

Based upon these considerations, ITTA urges the Commission to consider a less detailed measurement structure consistent with the principles proposed in the next section. Though less arcane, such a structure will prove no less effective to securing the measurement, enforcement, and deterrence goals which are the true objectives of the Notice proposals.

3. ITTA's proposed principles will achieve a measurement structure which balances the burdens and benefits acknowledged in the Notice.

ITTA proposes that performance measurements be developed for midsize companies for each of the five categories of OSS activity recognized in the Notice – pre-ordering, ordering, provisioning, maintenance and repair, and billing – and for

[35] Id at 32.

interconnection and OS/DA. But ITTA further proposes that the FCC's recommendations to the states for midsize companies be reduced to minimum levels, in keeping with the above discussion and consistent with the general principles listed below. The states should be encouraged to develop and apply standards for midsize companies in their respective jurisdictions on a case-by-case basis, geared to existing state reporting requirements. This approach will ensure that the goals of measurement, enforcement and deterrence will be achieved, but in a manner least burdensome to the carriers and the states involved.

The Commission should recommend to the states that, in identifying and implementing measurements for midsize companies, the following principles should be considered and reflected to the degree practicable and warranted in each company's circumstance, in each affected jurisdiction:

a. **Comparability:** The essence of discrimination is disparate treatment resulting in detriment to one party or the other. To the extent an incumbent treats a new entrant in a manner comparable to the self-provisioning employed by the incumbent, discrimination is avoided. This consideration would entail appropriate transition periods as the incumbent introduces new processes, procedures, or systems. Such introduction, as discussed above, would be driven by consumer needs and market conditions, rather than regulatory fiat.

b. **Data re-use:** Where the incumbent is already producing data in areas or on topics comprehended by the interconnection requirements, the states should adopt a preference for the use of such data and systems, rather than impose new data requirements. In many cases, the states already require periodic reporting (e.g., troubles per hundred lines, repeat outages, held orders longer than 30

days, etc.) which will provide a practical and adequate basis for enforcement and deterrent, particularly since such reports are already being utilized for similar purposes in non-interconnection service matters, as well.

c. **Sampling:** The FCC should recommend that wherever practicable, midsize companies should be permitted to provide data on a sampled basis. Sampling will prove less expensive in many instances, while yet satisfying the "visibility" requirement -- that measurements be made and be made known to third parties. Visibility, in turn, underpins the enforcement and deterrence goals. Thus, sampling addresses these goals, as well.

d. **Compliance auditing:** The state commissions, and not individual carriers, should be permitted to conduct periodic audits to verify the accuracy of data utilized in the measurement process. The states have no commercial axes to grind, nor any need to purloin competitively valuable information. Periodic audits, particularly on a sampling basis, will maintain a sufficient level of scrutiny to serve enforcement and deterrence needs, but will avoid the cost burdens and competitive problems which continual, broad scale, multi-party auditing entails.

e. **Confidentiality:** Measurement results and related underlying data should be reported to and examined by the states, alone. The measurement scheme proposed here goes well beyond any analogy to airline on-time reporting. Even the more limited measurements requested for midsize companies can include competitively sensitive data (patterns for introducing new services, internal realignments, etc.), separate but decipherable from the measurements and their

underlying data. The antitrust laws generally frown on competitors sharing access to pricing, product, and market information. No separate justification for exposure of such data exists here, and the Commission's goals can be satisfied as long as the states have access to the information.

f. **Geographic conformity:** The Commission should recommend that the states adjust the scope of specific measurements to conform to the particular operating or reporting patterns of the midsize company in their jurisdiction. For example, existing reports made be made by study area, by service area, or statewide. In conjunction with item b., above, such conformity will maximize the use of available data, systems, and reports, thereby minimizing the cost of compliance with measurement requirements.

g. **Sunsetting:** While the statutory requirement to interconnect may be indefinite, so to are the statutory prohibitions against discrimination and the mechanisms for enforcing those prohibitions. The need for special measurements and reports is not indefinite. Evolutions in competition, in the marketplace, and in technology will supersede the need to maintain these special requirements. The Commission should recommend that the states provide a sunset period (for termination or at least for formal re-examination) of any measurements adopted in connection with this Notice.

h. **Cost recovery:** In its recent Local Number Portability order,[36] the Commission provided for the recognition of carrier-specific costs incurred specifically in the provision of local number portability. The Commission also afforded any

[36] *In the Matter of Telephone Number Portability*, Third Report and Order, CC Docket No. 95-116, RM 8535, para. 68-74 (released May 12, 1998).

carrier the further opportunity to demonstrate that a portion of that carrier's joint costs was an incremental cost incurred specifically in the provision of local number portability. ITTA recognizes that the *Iowa Utilities Board* decision confirms state control under the 1996 Act of all pricing issues affecting UNEs and wholesale resale. A Commission recommendation, however, that states specifically consider issues associated with compliance costs in the case of midsize companies, would not contravene the ruling in that case and would recognize the more limited resources available to midsize companies for dealing with interconnection issues.

In proposing that the above principles guide the development of measurements for midsize companies, ITTA seeks to follow the common sense approach reflected in the Notice and in prior statements of Chairman Kennard. ITTA's members recognize that some amount of measuring is appropriate, but at levels well below that contemplated for larger carriers. The above proposals reflect a reasonable approach to achieving the Commission's goals while minimizing the cost of securing that achievement, consistent with the Notice requirements.

Conclusion

ITTA's comments here attempt to balance the need for measurement, enforcement and deterrence, with the costs and other burdens incumbent midsize carriers must bear as a part of that process. If the guidelines appear much simplified from the Commission's proposal, they are yet a long way from the "relatively few and very simple measures" Commissioner Furchtgott-Roth identifies with efficient economic regulation. ITTA's members recognize the influence which Commission recommendations will have on the states. It supports the Commission's choice of persuasion, and hopes to persuade it to adopt and to pass to the states the recommendations contained herein.

Respectfully submitted,

INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

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June 1, 1998